

In the Matter of the Compensation of
JACK M. COOPER, Claimant
Own Motion Nos. 16-00028OM; 16-00013OM
INTERIM OWN MOTION ORDER POSTPONING ACTION ON REVIEW OF
CARRIER CLOSURE

Dale C Johnson, Claimant Attorneys
Sather Byerly & Holloway, Defense Attorneys

Reviewing Panel: Members Weddell and Johnson.

Claimant requests review of the January 6, 2016 and March 30, 2016 Own Motion Notices of Closure, which declared his conditions medically stationary as of February 10, 2015, and awarded an additional 75 percent (240 degrees) unscheduled permanent partial disability (PPD) and 22 percent (33 degrees) scheduled PPD for his “post-aggravation rights” new/omitted medical conditions (pelvic fractures, hemopneumothorax, right rib fractures ribs 1-8, fracture of right orb, fractured teeth 14-16, post traumatic arthritis left mid-foot, Lisfranc fracture left foot, recurrent facial scar infections, and exposure to keratitis with incomplete lid closure and reduced visual acuity and amplitude).¹ On review, claimant contends that his claim was prematurely closed. Based on the following reasoning, we find that the claim was not prematurely closed, postpone action regarding the permanent disability issue, and refer the claim to the Director to appoint a medical arbiter.

FINDINGS OF FACT²

Claimant sustained a compensable injury on September 1, 1983. The claim was ultimately accepted for: right arm fracture with paralysis of right upper

¹ Claimant’s September 1, 1983 claim was accepted as a disabling claim and was first closed on August 9, 1988. Thus, his aggravation rights expired on August 9, 1993. Therefore, when claimant sought claim reopening in May 2010, the claim was within our Own Motion jurisdiction. ORS 656.278(1). On August 6, 2010, we reopened claimant’s Own Motion claim for a “worsening” of the previously accepted conditions. On May 7, 2012, we set aside the self-insured employer’s February 24, 2012 Notice of Closure as premature. On January 6, 2016, the employer issued its Notice of Closure for the Own Motion “worsened condition” claim.

On March 30, 2016, the employer voluntarily reopened the Own Motion claim for “post-aggravation rights” new/omitted medical conditions. Also on March 30, 2016, the employer issued its Notice of Closure regarding that claim.

² Following the employer’s submission of exhibits, claimant submitted additional exhibits, which we number as follows. The employer’s December 10, 2015 letter to Dr. Dekker, claimant’s attending physician, is numbered as Exhibit 30A. Claimant’s attorney’s May 23, 2016 letter to Dr. Dekker is numbered as Exhibit 44.

extremity, fracture right tibia and fibula, fracture left foot, right brachioplexus trauma, C4-5 fracture and dislocation, maxillary fractures, mandibular fractures, facial lacerations, and chronic left maxillary ethmoid sinusitis. (Ex. 2).

An August 9, 1988 Determination Order awarded: (1) 32 percent (102.4 degrees) unscheduled PPD for the cervical spine; (2) 8 percent (15.36 degrees) scheduled PPD for the loss or use of function of the left arm; (3) 21 percent (40.32 degrees) scheduled PPD for the loss or use of function of the right arm; (4) 23 percent (34.5 degrees) scheduled PPD for the loss or use of function of the left leg; and (5) 11 percent (16.5 degrees) scheduled PPD for the loss or use of function of the right leg. (Exs. 1, 10-2).

On August 6, 2010, claimant's Own Motion claim was reopened for a "worsening" of these previously accepted conditions. *Jack M. Cooper*, 62 Van Natta 2031 (2010).

A February 24, 2012 Notice of Closure declared claimant's conditions medically stationary as of January 31, 2012, and awarded temporary disability benefits. (Ex. 9). Claimant requested review, and we set aside that February 2012 closure notice as premature. *Jack M. Cooper*, 64 Van Natta 854 (2012).

On July 14, 2014, the self-insured employer accepted the following "post-aggravation rights" new/omitted medical conditions: pelvic fractures, hemopneumothorax, right rib fractures ribs 1-8, fracture of the right orb, fractured teeth 14-16, post traumatic arthritis left mid-foot, Lisfranc fracture left foot, recurrent facial scar infections, and exposure keratitis with incomplete lid closure and reduced visual acuity and amplitude. (Ex. 11). Claimant's Own Motion claim was not reopened for these "post-aggravation rights" new/omitted medical conditions at that time.

On February 9, 2015, Dr. Teed, orthopedist, examined claimant on behalf of the employer. (Ex. 13). He stated that all of the accepted conditions, including the "post-aggravation rights" new/omitted medical conditions, were medically stationary, with the exception of the following conditions, which he considered outside of his specialty: (1) keratitis with incomplete lid closure and reduced visual acuity and amplitude; and (2) hemopneumothorax. (Ex. 13-8). Regarding those conditions, he deferred to an ophthalmologist and a vascular specialist, respectively. (*Id.*)

Dr. Teed further noted that claimant's right rib fractures and pelvic fractures were medically stationary without impairment. (Ex. 13-9, -12). He stated that claimant had 5/5 strength across the hips and measured the ranges of motion (ROM) in both hips. (Exs. 13-9, 24-1). Regarding the pelvis, Dr. Teed noted no limitations in standing, walking, or repetitive use. He stated that the pelvis had no deformity, no ankyloses, and no contralateral injuries. He also noted no leg length discrepancy. (Ex. 13-9).

Dr. Teed also found claimant's post traumatic arthritis of the left foot medically stationary and measured ROM in the toes and ankles, noting that the right ankle had no history of injury or disease. (Ex. 13-11). He measured 5/5 strength in the lower extremities, but found limited ability to repetitively use the left foot and ankle secondary to progressive disease, deformity, pain, and weakness. (*Id.*) He found no sensory loss in the lower extremities, no ligamentous instability, and no ankyloses. Finally, he stated that claimant was prevented from walking and standing more than two hours in an eight-hour day due to advanced degeneration across the foot. (*Id.*)

On February 9, 2015, Dr. Berney, internal medicine physician, examined claimant on behalf of the employer. (Ex. 14). His opinion focused on the "internal medicine diagnoses," which he listed as: (1) History of chronic left maxillary and ethmoid sinusitis; and (2) status post hemopneumothorax. (Ex. 14-3). Dr. Berney found these conditions to be medically stationary. (Ex. 14-4). He opined that claimant had Class 2 dyspnea impairment and Class 2 lung impairment. (Ex. 14-4-5).

On February 10, 2015, Dr. Baer, ophthalmologist, examined claimant on behalf of the employer. (Ex. 15). His opinion focused on claimant's visual system conditions, which he identified as "fracture of the right orbit" and "exposure keratitis with incomplete lid closure and reduced visual acuity and amplitude." (Ex. 15-4). Dr. Baer opined that the right orbit fracture had healed and was stable, without "symptoms or difficulties." (*Id.*) He also found that claimant no longer had exposure keratitis or incomplete lid closure and any resultant reduced visual acuity was no longer present. (*Id.*)

On April 10, 2015, Dr. Dekker, claimant's attending physician, did not concur with the reports from Drs. Teed, Berney, and Baer. (Ex. 16).

On April 14, 2015, the employer sent an inquiry to Dr. Kip Hammon, DMD, noting that he had apparently completed the restorative dental work regarding claimant's fractured teeth 14 through 16. (Ex. 17). The employer stated that

Dr. Hammon had last seen claimant on October 1, 2014, and that his “injuries to his teeth were declared stationary at his recent IME exam.” (Exs. 13-8, 17) An undated response initialed “KH” indicated that claimant had no limitation to his diet as a result of the fractured teeth 14 through 16. (Ex. 17).

In June 2015, Dr. Dekker responded to the employer’s inquiry about claimant’s medically stationary status and impairment findings. (Exs. 18, 19). She found several conditions medically stationary (sinus conditions, fracture right tibia and fibula, maxillary fractures, mandibular fractures, facial lacerations, pelvic fractures, hemopneumothorax, and right rib fractures 1-8). (Ex. 19-1, -2). However, she found the C4-5 fracture and dislocation not medically stationary, noting that claimant had been advised to wait for cervical surgery until no alternatives were available. (Ex. 19-1-2). She also thought that claimant had multiple right shoulder injuries that might need a right shoulder replacement. (Ex. 19-1, -2). In addition, she either was not sure of claimant’s medically stationary status or did not address that status regarding several conditions (exposure to keratitis with incomplete lid closure and reduced visual acuity and amplitude, fractured teeth, right arm fracture, right brachial plexus, fracture left foot, posttraumatic arthritis left foot, and Lisfranc fracture left foot). (Ex. 19-1-3). Dr. Dekker offered few impairment findings and did not perform a closing examination. (Ex. 19).

In a July 8, 2015 letter to Dr. Dekker, the employer stated that two reports were attached that addressed claimant’s eye condition and asked whether she agreed that the right eye conditions were medically stationary and that the physical findings in those reports adequately described any impairment.³ (Ex. 22). On July 30, 2015, Dr. Dekker concurred and added “that the facial fractures have healed.” (*Id.*) She also noted that “exposure keratitis may flare up at times, the incomplete lid closure has resolved.” (*Id.*)

On September 3, 2015, Dr. Dekker concurred with Dr. Teed’s measurements regarding claimant’s hip impairment. (Exs. 24, 25).

On December 10, 2015, the employer sent Dr. Dekker a summary of the various “medically stationary status” opinions regarding claimant’s accepted conditions, as well as general references to permanent impairment found by the examining physicians. (Ex. 30A). The employer asked whether Dr. Dekker agreed with that summary. (Ex. 30A-3).

³ These two “attached” reports were not included in this record. (Ex. 22).

On December 31, 2015, Dr. Dekker checked a box indicating that claimant was medically stationary, but noted “NA” regarding the date of that medically stationary status. (Ex. 31). She released claimant to return to modified work regarding the pelvic fractures and hemopneumothorax conditions. (*Id.*) She limited him to occasionally lifting/carrying 50 pounds and frequently lifting/carrying 20 pounds. He was limited in stooping, bending, crouching, crawling, kneeling, twisting, climbing, reaching, and pushing/pulling. He was also limited to a total of six hours standing/walking in workday. (*Id.*)

On January 4, 2016, Dr. Dekker disagreed, in part, with the employer’s December 10, 2015 summary, although she “confirm[ed] the conditions that [she] already rated medically stationary.” (Ex. 32-1). She thought that claimant would need right shoulder replacement in the future. (*Id.*) She disagreed with Dr. Teed’s opinion. (*Id.*) Finally, she noted that claimant’s dental work was beyond her area of expertise and that she would defer to the proper specialists on that issue. (Ex. 32-2).

A January 6, 2016 Own Motion Notice of Closure closed the reopened “worsened condition” claim, declared claimant’s condition medically stationary as of February 10, 2015, and awarded temporary disability benefits. (Ex. 37). It also purported to award 75 percent (240 degrees) unscheduled PPD and 22 percent (33 degrees) scheduled PPD for the as yet unreopened claim for “post-aggravation rights” new/omitted medical conditions (pelvic fractures, hemopneumothorax, right rib fractures ribs 1-8, fracture of right orb, fractured teeth 14-16, post traumatic arthritis left mid-foot, Lisfranc fracture left foot, and recurrent facial scar infections). (Ex. 37-1).

Claimant requested Board review of the January 2016 Notice of Closure. (WCB Case No. 16-00013OM). Thereafter, the parties were notified that there was no record that the Own Motion claim for the new/omitted medical conditions had been reopened.

On March 30, 2016, the employer voluntarily reopened claimant’s Own Motion claim for the following “post-aggravation rights” new/omitted medical conditions: pelvic fractures, hemopneumothorax, right rib fractures ribs 1-8, fracture of right orb, fractured teeth 14-16, post traumatic arthritis left mid-foot, Lisfranc fracture left foot, recurrent facial scar infections, and exposure to keratitis with incomplete lid closure and reduced visual acuity and amplitude. (Ex. 42).

A March 30, 2016 Notice of Closure closed the Own Motion claim for the aforementioned “post-aggravation rights” new/omitted medical conditions, declaring those conditions medically stationary as of February 10, 2015. (Exs. 42, 43). No additional temporary or permanent disability benefits were awarded beyond that granted by the January 6, 2016 closure notice. Claimant requested review. (WCB Case No. 16-00028OM).

On June 6, 2016, Dr. Dekker checked boxes indicating that claimant’s right arm fracture with paralysis of right upper extremity and C4-5 fracture and dislocation conditions were not medically stationary on the date of closure of the “worsened” conditions (January 6, 2016). (Ex. 44-2). She also checked a box indicating that not all of claimant’s conditions were medically stationary in February 2015. (*Id.*) Finally, she checked a box indicating that that, in her January 4, 2016 letter, she did not concur with the findings of Dr. Teed. (Ex. 44-4).

CONCLUSIONS OF LAW AND OPINION

On review, claimant argues that his claim was prematurely closed because all of his accepted conditions were not medically stationary at claim closure. In addition, he contends that there was insufficient evidence to rate impairment because his attending physician, Dr. Dekker, neither made her own impairment findings nor concurred with the permanent impairment findings of the examining physicians. Therefore, he argues that we should rescind the Notices of Closure. Based on the following reasoning, we are not persuaded that the claim closures were premature.

As summarized above, claimant’s Own Motion claim was separately reopened and closed for “worsened conditions” and “post-aggravation rights” new/omitted medical conditions. We address each closure separately.

January 6, 2016 Claim Closure

First, regarding the “worsened condition” claim, when a claim has been reopened pursuant to our Own Motion authority for a “worsened condition” under ORS 656.278(1)(a), the subsequent closure of that claim pertains only to the reopened “worsened condition” claim. *Dennis D. Kessel*, 55 Van Natta 3651 (2003); *Clayton L. Sutherland*, 55 Van Natta 2694 (2003); *Ginney E. Etherton*, 55 Van Natta 2216 (2003).

Here, the claim was reopened for a “worsened condition” that was in Own Motion status. *See* ORS 656.278(1)(a). Accordingly, the employer’s January 6, 2016 Notice of Closure pertained only to the claim for a “worsened condition.” *See Etherton*, 55 Van Natta at 2217; *Arvin D. Lal*, 55 Van Natta 816 (2003). Therefore, the premature closure issue regarding the previously accepted “worsened conditions” depends on whether those conditions were medically stationary at the January 6, 2016 Own Motion Notice of Closure. A closure is premature if all of the accepted and reopened conditions are not medically stationary on the date of claim closure. *Jerry A. Akins*, 61 Van Natta 1341, 1347 (2009); *Muriel E. Dexter*, 55 Van Natta 4185, 4189 (2003).

“Medically stationary” means that no further material improvement would reasonably be expected from medical treatment or the passage of time. ORS 656.005(17). The term “medically stationary” does not mean that there is no longer a need for continuing medical care. *Maarefi v. SAIF*, 69 Or App 527, 531 (1984); *Pennie Rickerd-Puckett*, 61 Van Natta 336 (2009). The issue of claimant’s medically stationary status is primarily a medical question to be decided based on competent medical evidence, not limited to the opinion of the attending physician. *Harmon v. SAIF*, 54 Or App 121, 125 (1981); *Michael J. Oliver*, 63 Van Natta 728, 730 (2011). We may consider post-closure medical evidence regarding whether claimant was medically stationary at the time of closure. *Scheuning v. J.R. Simplot & Co.*, 84 Or App 622, 625 (1987); *Jeffrey L. Heintz*, 67 Van Natta 16, 18 (2015).

Here, on February 9, 2015, claimant was examined by Dr. Teed, orthopedist, on behalf of the employer. (Ex. 13). Dr. Teed found that all of claimant’s previously accepted conditions (including the C4-5 fracture and dislocation and the right arm fracture with paralysis of the right upper extremity) were medically stationary. (Ex. 13-7).

In contrast, Dr. Dekker offered inconsistent statements regarding claimant’s medically stationary status. In June 2015, Dr. Dekker found that several of the previously accepted conditions were medically stationary. (Ex. 19-1, -2). However, she stated that the C4-5 fracture and dislocation was not medically stationary, noting that, pursuant to medical advice, claimant was waiting for cervical surgery until no alternatives were available.⁴ (Ex. 19-1-2). At that time, Dr. Dekker offered no opinion regarding the medically stationary status of the right arm fracture with paralysis of the right upper extremity. (Ex. 19-1).

⁴ Although Dr. Dekker stated that the C4-5 fracture and dislocation conditions were not medically stationary, she based that statement on the expectation that claimant will need surgery at some time in the future. She also considered that claimant had multiple right shoulder injuries that might need right

In December 2015, Dr. Dekker checked a box indicating that claimant was medically stationary, but noted “NA” regarding the date of that medically stationary status. (Ex. 31). She also indicated that, if claimant was not medically stationary, the estimated medically stationary date was “as per legal documentation.” (*Id.*) In January 2016, she “confirm[ed] the conditions that [she] already rated medically stationary.” (Ex. 32-1).

In June 2016, Dr. Dekker indicated that claimant’s right arm fracture with paralysis of right upper extremity and C4-5 fracture and dislocation conditions were not medically stationary on the date of closure of the “worsened” conditions (January 6, 2016). (Ex. 44-2).

Given the unexplained inconsistencies in Dr. Dekker’s opinions regarding the medically stationary status of the previously accepted conditions, we do not find her opinion persuasive. *See Howard L. Allen*, 60 Van Natta 1423, 1424-25 (2008) (internally inconsistent medical opinion, without explanation for the inconsistencies, was unpersuasive). Instead, we find persuasive Dr. Teed’s opinion that those previously accepted conditions (for which the “worsened condition” claim was reopened) were medically stationary. (Ex. 13-7). Therefore, the “worsened condition” claim was not prematurely closed.

March 30, 2016 Claim Closure

As addressed above, Dr. Teed, orthopedist, examined claimant on behalf of the employer on February 9, 2015. (Ex. 13). He opined that all of the accepted conditions, including the “post-aggravation rights” new/omitted medical conditions, were medically stationary, with the exception of conditions that he felt were outside of his expertise (keratitis with incomplete lid closure and reduced visual acuity and amplitude and hemopneumothorax). (Ex. 13-8). He deferred to other specialists regarding those conditions. Dr. Teed also measured permanent impairment regarding the hips and legs.

On February 9, 2015, Dr. Berney, examining internal medicine physician, opined that the new/omitted hemopneumothorax condition was medically stationary. (Ex. 14-4). He also found that claimant had Class 2 dyspnea impairment and Class 2 lung impairment. (Ex. 14-4-5).

shoulder replacement in the future. (Exs. 19-1, -2, 32-1). However, there are no accepted right shoulder injuries. In any event, the expectation that a surgery might occur at some point in the future does not establish that a condition is not medically stationary. *See David M. Kitzman*, 64 Van Natta 390 (2012).

On February 10, 2015, Dr. Baer, examining ophthalmologist, focused on the visual system conditions. (Ex. 15). Specifically, he opined that claimant no longer had exposure keratitis or incomplete lid closure and any resultant reduced visual acuity was no longer present. (Ex. 15-4). He also found that the right orbit fracture had healed and was stable, without “symptoms or difficulties.” (*Id.*)

Thus, addressing the various conditions within their individual specialties, the examining physicians (Drs. Teed, Berney, and Baer) opined that all of the “post-aggravation rights” new/omitted medical conditions were medically stationary. (Exs. 13, 14, 15). In addition, they provided information regarding any permanent impairment for those conditions.

Dr. Dekker did not concur with those opinions. (Ex. 16). The employer repeatedly attempted (with limited success) to obtain her opinion regarding claimant’s medically stationary status and any permanent impairment findings for the “post-aggravation rights” new/omitted medical conditions. Specifically, in June 2015, Dr. Dekker opined that the pelvic fractures, hemopneumothorax, and right rib fracture conditions were medically stationary, but either was not sure or did not address the medically stationary status of several other new/omitted medical conditions (exposure to keratitis with incomplete lid closure and reduced visual acuity and amplitude, fractured teeth, posttraumatic arthritis left foot, and Lisfranc fracture left foot). (Ex. 19). She also offered few impairment findings.

In July 2015, Dr. Dekker checked a box indicating that she concurred that the right eye conditions were medically stationary, but she also apparently limited this concurrence to the healing of the facial fractures. (Ex. 22). As addressed above, in December 2015, she indicated that claimant was medically stationary, but noted “NA” regarding the date of that medically stationary status. (Ex. 31). She also indicated that, if claimant was not medically stationary, the estimated medically stationary date was “as per legal documentation.” (*Id.*) In June 2016, she stated that not all of claimant’s conditions were medically stationary in February 2015. (Ex. 44-2).

As with Dr. Dekker’s opinions regarding the medically stationary status of the previously accepted conditions, given the unexplained inconsistencies in her opinions regarding the medically stationary status of the “post-aggravation rights” new/omitted medical conditions, we do not find her opinion persuasive. *See Allen*, 60 Van Natta at 1424-25 (internally inconsistent medical opinion, without explanation for the inconsistencies, was unpersuasive). Instead, we find persuasive

the examining physicians' opinions that those new/omitted conditions were medically stationary as of February 10, 2015. (Exs. 13, 14, 15). Therefore, the March 30, 2016 Notice of Closure was not premature.

Claimant also contends that the March 2016 Notice of Closure was procedurally invalid because there was insufficient evidence to rate impairment in that his attending physician, Dr. Dekker, neither made her own impairment findings nor concurred with the permanent impairment findings of the examining physicians. Therefore, he argues that we should rescind the March 2016 Notice of Closure on that basis. Based on the following reasoning, we disagree.

In *Charles D. Leffler*, 67 Van Natta 1997, 2004 (2015), we held that an Own Motion Notice of Closure may be invalid when, prior to closure of a "post-aggravation rights" new/omitted medical condition claim, the carrier does not obtain the attending physician's findings of permanent impairment or the attending physician's ratification of such impairment findings from another provider. ORS 656.278(1)(b), (6); OAR 436-035-0001 *et seq.*; OAR 438-012-0055.

In contrast, we have held that an Own Motion Notice of Closure is not premature when, prior to closure of a "post-aggravation rights" new/omitted medical condition claim, the carrier unsuccessfully attempted to obtain the attending physician's findings of permanent impairment or the attending physician's ratification of such impairment findings from another provider. *See Dwayne L. Minner*, 67 Van Natta 2006, 2009 (2015) (when the record established that the carrier had made two unsuccessful attempts to obtain the attending physician's concurrence with another physician's impairment finding before closing the claim, the closure of the claim was not found premature).

We find that the circumstances here more closely reflect those in *Minner*. In this regard, the employer repeatedly attempted to obtain information from Dr. Dekker regarding claimant's medically stationary status and permanent impairment. Although Dr. Dekker did not concur with the examining physicians, she also provided inconsistent opinions. In effect, those inconsistent opinions were equivalent to the lack of response from the claimant's attending physician to the carrier's "impairment finding" inquiries in *Minner*. Under these particular facts, we decline to consider the March 2016 Notice of Closure procedurally invalid.

When a worker objects to a carrier's closure of a "post-aggravation rights" new/omitted medical condition claim, we apply the Director's standards in determining the appropriateness of a permanent disability award. *See* ORS

656.278(1)(b); *Edward A. Miranda, Sr.*, 55 Van Natta 784 (2003). In order for us to evaluate a claimant's permanent impairment under the Director's standards, the claimant's attending physician must make medical findings of impairment at the time of claim closure or the attending physician must concur with the impairment findings from another physician. OAR 436-035-0007(5)(a), (6); *Miranda*, 55 Van Natta at 793.

In *Michael P. Hannen*, 55 Van Natta 1508, 1516-17 (2003), we held that under ORS 656.278(6), when the record lacks sufficient medical information to rate the claimant's "post-aggravation rights" new/omitted medical condition under the Director's standards, and the claimant asserts that he/she has ratable impairment, it is appropriate to obtain the necessary medical information needed to rate the claimant's impairment through a medical arbiter. See OAR 438-012-0060(6)(b); *Jason L Wren*, 67 Van Natta 613 (2015); *Robert B. Reese*, 60 Van Natta 431 (2008).

Here, claimant has raised the issue of PPD rating, and the March 30, 2016 claim closure is before us for review. However, there are no impairment findings from claimant's attending physician at the time of the March 2016 claim closure or findings with which she concurred that we may use to evaluate claimant's permanent impairment for his "post-aggravation rights" new/omitted medical conditions (pelvic fractures, hemopneumothorax, right rib fractures ribs 1-8, fracture of right orb, fractured teeth 14-16, post traumatic arthritis left mid-foot, Lisfranc fracture left foot, recurrent facial scar infections, and exposure to keratitis with incomplete lid closure and reduced visual acuity and amplitude) under the Director's standards. OAR 436-035-0007(5)(a), (6); *Miranda*, 55 Van Natta at 793. Therefore, under these particular circumstances, this record is insufficient for us to rate the aforementioned new/omitted medical conditions under the Director's standards.

Accordingly, consistent with OAR 438-012-0060(6)(b) and *Hannen*, we refer the claim to the Appellate Review Unit (ARU) to appoint a medical arbiter.⁵ The parties shall provide the ARU with whatever information deemed necessary to assist the medical arbiter, including identification of the accepted "post-aggravation rights" new/omitted medical conditions (pelvic fractures,

⁵ Although claimant did not request a medical arbiter examination, we require "ratable" findings to perform our evaluation. Under these circumstances, obtaining those findings through a medical arbiter examination is appropriate. OAR 438-012-0060(6)(b); *Hannen*, 55 Van Natta at 1516-17; see also *Minner*, 67 Van Natta at 2010.

hemopneumothorax, right rib fractures ribs 1-8, fracture of right orb, fractured teeth 14-16, post traumatic arthritis left mid-foot, Lisfranc fracture left foot, recurrent facial scar infections, and exposure to keratitis with incomplete lid closure and reduced visual acuity and amplitude), the only conditions for which claimant is entitled to a rating of permanent disability benefits under ORS 656.278(1)(b) and 656.278(2)(d).⁶

Following completion of the medical arbiter process, and our receipt of a copy of the medical arbiter report, a supplemental briefing schedule will be implemented to allow the parties to address the effect, if any, the arbiter's report has on claimant's request for review of the January 6, 2016 and March 30, 2016 closure notices. After completion of that schedule, we will proceed with our review.

IT IS SO ORDERED.

Entered at Salem, Oregon on September 12, 2016

⁶ The ARU is requested to provide the Board with a copy of the entire written record (including any cover letter or questions to the arbiter from the ARU) that is forwarded to the medical arbiter.